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Policy design and non-design: A continuum of formulation modalities

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POLICY DESIGN AND NON-DESIGN—A CONTINUUM OF FORMULATION MODALITIES

Michael Howlett and Ishani Mukherjee

Introduction: Policy Design Studies Past and Future

A roadmap for a new ‘policy design orientation’ exists in studies undertaken in recent years into the formulation of complex policy mixes, in fields such as energy and environmental policy, among others (Howlett and Lejano, 2013; Howlett et al., 2014; Howlett, 2014a, 2014b). This new design orientation focuses attention on the construction of policy packages operating in complex multi-policy and multi-level design contexts that are expected to address multiple goals and objectives (del Rio and Howlett, 2013). It seeks to better describe the nature of the bundles or portfolios of tools that can be used to address policy problems and to help understand the interactive effects that occur when multiple tools are used over time (Howlett et al., 2014).

The research agenda of the new design orientation is focused on questions that an earlier literature on the subject largely neglected, such as the trade-offs existing between different tools in complex policy mixes and how to deal with the synergies and conflicts that result from tool interactions, as well as the different means and patterns—such as layering—through which policy mixes evolve over time (Thelen, 2004).

This temporal orientation highlights the complex processes through which policies emerge over time. It also raises the issues of how to distinguish between design and other formulation and decision-making processes and the frequency or likelihood of occurrence of each. Many formulation situations, for example, involve information and knowledge limits or involve multiple actors whose relationships may be more adversarial or competitive than is typically associated with a ‘design’ process and outcome (‘non-design’) (Schön, 1988; Gero, 1990). That is, not all policymaking is logic- or knowledge-driven, and it is debatable how closely policymakers approximate the instrumental logic and reasoning that is generally thought to characterize an intellectually driven design situation in this field or any other (Howlett et al., 2009).

This chapter addresses the differences between more and less analytical and instrumental policy formulation and decision processes and explores the likelihood of each occurring. By engaging in a discussion of the intention to engage in policy design—whether towards public interest or more politically driven opportunism—and of the capacity of governments to undertake such design efforts, the chapter develops a continuum of several formulation processes that can exist between ideal instrumental and problem-solution driven policy design and other more contingent and less intentional processes.

The Old and New Policy Design Orientation

Policy design entails the conscious and deliberate effort to define policy aims and map them instrumentally to policy tools that seek to achieve them (Majone, 1975; May, 2003; Gilabert and Lawford-Smith, 2012). In this sense, policy design signifies a particular type of policy formulation that is established on collecting knowledge about the outcomes of policy instrument use on policy targets and its relevance to the creation and implementation of policies meant to attain specific policy goals and aspirations (Weaver, 2009, 2010; Bobrow and Dryzek, 1987; Bobrow, 2006; Montpetit, 2003).

In policy studies, 'design' has been associated with both the analysis of policy instruments themselves and their implementation (May, 2003), as well as the effect of policy advice and ideas on the process of policy formation (Linder and Peters, 1990). Policy design in this sense can be understood as having a *substantive* element that comprises the technical arrangements of alternatives that can potentially resolve the policy problem at hand, and a *procedural* component that entails all the processes and activities necessary to coordinate the activities of policy actors in charge of formulating, making decisions and administering the alternatives (Howlett, 2011). Policy design, therefore, spans both formulation and implementation in the policy process by involving the interactions between actors, ideas and interests that flow between both of these stages (Howlett et al., 2009).

Howlett, Mukherjee and Woo have argued the recent renewed interest in policy design is different in many regards from earlier thinking and reflection on the topic (Howlett et al., 2015; see also Howlett and Lejano, 2013; Howlett, 2014a, 2014b; Jordan et al., 2013). Designs are now treated as composed of multiple elements and more complex than was often the case in the past, and more attention is being paid to the processes of policy advice and formulation that lead to the adoption of certain kinds of designs (van der Heijden, 2011, Thelen, 2003; Craft and Howlett, 2012).

Nevertheless, it is often still the case, as has been argued in the past (for example, Lindblom, 1959; Dryzek and Ripley, 1988; Linder and Peters, 1990), that design thinking in the policy sciences is dismissed as an example of excess rationality, one that ignores the garbage-can type quality of much policymaking instances (Cohen et al., 1979; Dryzek, 1983; Kingdon, 1984) and its overt basis in political and administrative bargaining (Lindblom, 1959). This criticism harkens back to the post-WWII criticisms of planning efforts (Lindblom, 1959; Simon, 1965) and the reflections on the nature of bounded rationality and incrementalism that accompanied it (see Baumgartner and Jones, 1991, 2002; Howlett and Migone, 2011). This criticism suggests a very distinct limit to policy efforts in the design orientation, one in which the usual process of formulation followed is much more a 'non-design' one than a 'design' one.

Although many of these same criticisms remain cogent in the case of some extreme forms of and proposals for policy design, here it is argued that this is not a devastating critique of the new policy design orientation, unlike the situation in the 1950s and 1960s with planning. This is because in most cases contemporary adherents and proponents of policy design are well aware of the limits on cognition and knowledge that plagued earlier planners and made them an easy target for critics. What is referred to as 'policy design' in the contemporary literature is more subtle and always assumes the need to design for context (Howlett and Mukherjee, 2014; Bobrow, 2006; Howlett, 2011).

Developing a Spectrum of Design and Non-Design Activities: The Significance of Layering and Temporality

In itself, this suggests that there is a spectrum of design and non-design formulation processes, ranging from capable policy processes informed by instrumental motivations to 'poor' political ones that are driven by other logics. In order to be more precise about these processes, it is

necessary to examine in more detail the nature of the constraints on government intentions, which can negatively affect both design and non-design processes.

As set out above, one factor that impacts movement along the spectrum is the extent to which an existing policy regime is already set in place. That is, almost every design situation is built on the legacy of past decisions, and very few policymaking processes begin anew. Instances of completely new policy portfolios being created are rare, and these are usually cases of unprecedented or groundbreaking legislation that has been necessary in response to a new or growing policy problems (such as the Clear Air Act enacted in the United States in response to air pollution; Schmalensee et al., 1998; Libecap, 2005). In most cases, however, policy initiatives need to be enacted in design spaces that contain previous policies. These efforts can thus often be undermined due to new policy elements conflicting with existing policy components, necessitating reform.¹ This can create policy portfolios or mixes that contain various incompatibilities, tending to frustrate the achievement of policy goals.

That is, the contextual ‘lock in’ that leads to layering can impact the formulation process by restricting a government’s ability to evaluate alternatives and plan or design in a purely optimal instrumental manner (Oliphant and Howlett, 2010; Williams, 2012). Policy arrangements are often the result of transformation pathways that can easily lead to internal contradictions emerging between tools and goals within policy mixes (Hacker, 2004), and mixes of policy elements can emerge over long stretches of time as a result of successive policy decisions that are not necessarily congruent.

Processes of Replacement and Layering and Their Implication for Policy Design

Like these historical neo-institutionalists, many in the new policy design orientation have argued that policy mixes are often the result of transformation pathways—such as layering—that can easily lead to internal contradictions between tools and goals within policy mixes (Hacker, 2005).

In such situations, policy designers are not faced with the issue of completely re-designing a policy ‘package’ but rather with ‘tweaking’ some aspect(s) of it in order to repair its efficacy (Gun-ningham and Sinclair, 1999; Thelen, 2003, 2004; Eliadis et al., 2005). This involves redesigning existing regime elements but in the context of a restricted design space that has been altered by remnants of earlier policy efforts.

In this case, legacies from earlier rounds of decision-making affect the introduction of new elements that conflict with pre-existing policy components. Policy development strongly marked in this way is typically one where new elements are added to the policy mix without the removal of older ones, and existing elements are stretched to try to fit new goals and changing circumstances.

In such circumstances, the introduction of new policy ideas and the resulting interaction with existing policy components to foment major policy change are common phenomena, much more so than the paradigmatic design overhaul suggested by the idea of the creation of an entirely new policy package in order to restore or assert paradigmatic stability. Unlike Hall’s original contention, when paradigmatic change does occur, it “may be much less sudden and all-encompassing than originally surmised, reflecting instead a more gradual, hermeneutic and discourse-intensive activity” (Wilder and Howlett, 2014).

Customization as a Logic of Policy Design: The Idea of Packaging

Most early design studies focused on what in fact is the exceptional case of ‘replacement’ or ‘exhaustion,’ in which an existing policy is scrapped and a new one adopted in its entirety. Although there is this strong tradition in the design literature to restrict discussions of design

to situations characterized by processes of replacement and exhaustion, there is ample existing evidence showing that many existing policy regimes or mixes have instead developed through processes of policy layering, or repeated bouts of policy conversion or policy drift, in which new tools and objectives have been piled on top of older ones, creating a mixture of inconsistent and incoherent policy elements. Sweeping it all away and starting again with custom made policy designs capable of meeting contemporary policy challenges may seem to be the obvious solution. Policy packaging of this kind, which deliberately seeks to exploit synergistic relationships between multiple policy instruments, was definitely the explicit or implied preference in most earlier efforts to promote enhanced policy integration and coherence in designs across different policy domains (Meijers, 2004; Briassoulis, 2005). While not all design processes—in fact, very few—take place in this fashion, customizing policy responses to complex policy problems as a principle indicates a desirable type of formulation and is therefore on the ideal end of the design–non–design spectrum.

While there cannot be any unambiguously ideal policy instrument portfolios that are pre-determined (Flanagan et al., 2011), identifying ideal practices of policy design is a worthwhile endeavor for policy studies. As Howlett and Rayner (2013) reiterated, policy design is about “how specific types of policy tools or instruments are bundled or combined in a principled manner into policy ‘portfolios’ or ‘mixes’ in an effort to attain policy goals” (p. 170). And while specific policy tools and goals evolve over time, ideal design that is customizable to changing policy realities is one that aims to uphold coherence and consistency between the means and ends of policy. Ideal design also calibrates a policy response in proportion to the policy goals in hand. ‘Proportionality,’ then, becomes an important feature of customized design given the instances where governments systematically devise instruments or instrument mixes representing over- or under-reactions, and this disproportionality can tend to move formulation across the design spectrum. Understanding the empirics of disproportionate policy design, therefore, represents a promising new area of research for depicting different design modalities (Maor, 2017).

When this level of customization warrants completely removing old elements and constructing entirely new policy portfolios, the design activity involves replacement (Kern et al., 2017; Kern and Howlett, 2009; Howlett and Rayner, 2007). Constructing policy anew in order to maintain coherence between policy goals and means and uphold consistency between the multiple components of the policy instruments that are involved results in bespoke policy mixes that are tailored to individual policy contexts. In elaborating on ‘top-down’ versus ‘bottom-up’ policy design for regional economic development, Howells (2005) states that “bespoke [bottom-up] policies have the advantage that they can be specifically developed for the local context in relation both to the local innovation structure but also in relation to the policy implementation framework” (p. 1228). Conceptually, this modality of design, in its ‘purest’ form, is also the most amenable to experimentation; a bespoke policy portfolio is generally ‘unproven’ in other contexts, allowing policy designers the most scope of ‘learning-by-doing.’ Along the same lines, bespoke policies can also generally be riskier as there is no history of their implementation and may be time- and resource-intensive as they take several iterations to become fully developed.

A closely related form of customization in policy design is the packaging of ‘off-the-shelf’ or ‘best-practice’ policies into mixes to address complex policy goals. In many cases, governments may opt to adapt best-practice programs or mechanisms based on their previous success in similar contexts and due to local capacity or time constraints. As Howells (2005) furthers, these policies are often applied due to their tried-and-tested, proven merit,

because, in a sense, they are ‘off the shelf’ they offer the potential to be much quicker to apply and therefore are more likely to find an agency or other organization that has

implemented the policy and has practical experience that can be used to provide subsequent support and advice.

(p. 1228)

The drawbacks of off-the-shelf designs can emerge if they are significantly incongruent with local contexts, capacities and resource endowments.

Bricolage as the Logic of Policy Design: The Idea of Patching

Unlike the rare cases of replacement, most design situations must deal with already created policies, are limited by historical legacies, and are thus hampered due to internal inconsistencies. Although other policy instrument groupings might be more successful in creating an internally supportive combination, it may be very difficult to accomplish or propose wholesale change. Designs instead will often focus on reform and replacement of some aspect(s) of an existing arrangement rather than an extensive overhaul of existing policy structures.

A common process behind policy patching is 'layering,' in which some aspects of a policy are layered on top of pre-existing ones (van der Heijden, 2011). As mentioned before, layering in policymaking can indicate an accretion process by which new policy components get combined with a prevailing policy framework.

This form of ongoing adjustment or bricolage forms the underlying logic of the processes of policy layering whereby knowledge about the interactions between internal policy components as well as the variability within the processes of policy change are fundamental to creating the most effective mix of new and existing instruments (Howlett and Rayner, 2013)

A more problematic type of layering can ensue when the consequences of layering mix elements over the long-term leads to a process of 'stretching' or 'tense layering' (Kay, 2007). That is, repeated bouts of layering can lead to both incoherence ('tension') amongst the goals and inconsistency with respect to the instruments and settings used in a policy area. Legacies from earlier rounds of decision-making will affect the introduction of new elements, which are very likely to conflict with pre-existing policy components. These tensions between the old and the new layers serve to drive policymaking forward so that even in more or less stable periods changes will continue to be made to policies in the effort to reconcile these tensions.

Tense-layering processes that prevail over several decades can lead to policy 'stretching' whereby policy components of a mix are spread over an prolonged period to address new policy priorities or sectors that they were not meant to cover at the outset (Feindt and Flynn, 2009). Unlike patching, stretching is more challenging as a design modality because the haphazard linking of existing policy elements to new goals significantly enhances the risk of incoherence (Howlett and Rayner, 2007). This is especially the case if the tools work at cross-purposes, resulting in incongruence between stated policy goals and an otherwise coherent policy mix (Kern and Howlett, 2009).

Each of the above indicates, three types of design modalities that are largely dictated by how the accumulation of anomalies is dealt with, on the one hand, and the intention of the government for instrumental formulation, on the other. This intent, in turn, dictates the dominant 'direction' of bricolage, based on whether iterations of bricolage move 'forward' towards major change with successful experimentation with policy components in order to correct anomalies, or loop 'backward' as policymakers work to retain the status quo (Wilder and Howlett, 2014).

A final, fourth type of formulation process is non-design. Here some policy decisions and formulation processes are highly contingent ones in which 'design' considerations may be more or less absent and where the logical or empirical relations between policy components are ignored (Kingdon, 1984; Cohen et al., 1979; Dryzek, 1983; Eijlander, 2005; Franchino and Hoyland,

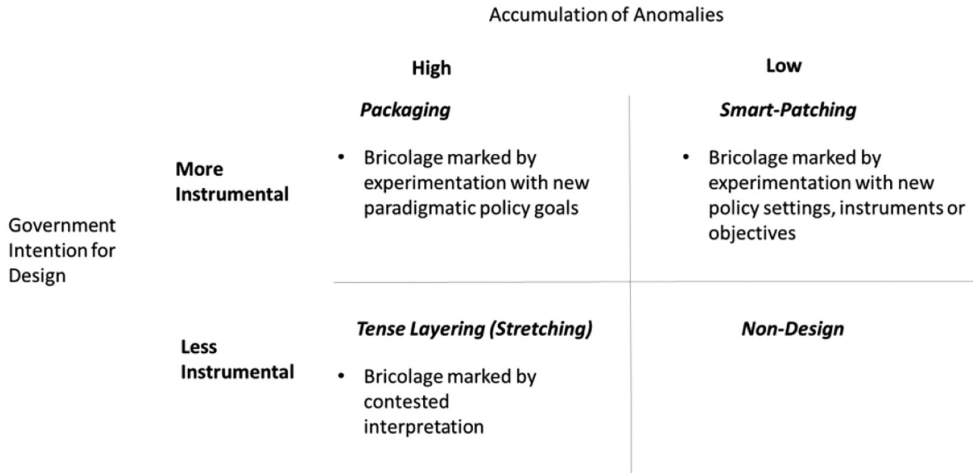


Figure 20.1 Formulation Spaces and Design Modalities

2009; Sager and Rielle, 2013). This includes a variety of contexts in which formulators, for example, may engage in trade-offs or log-rolling between different values or resource uses or, more extremely, engage in venal or corrupt behavior in which personal gain from a decision may trump other evaluative criteria. In these ‘non-design’ situations, the extent to which such considerations as political gain or blame avoidance calculations outweigh instrumental factors in policy formulation are empirical questions that can be studied systematically (Hood, 2010). These four types of formulation processes (Figure 20.1) vary in terms of the extent to which the policy goal is linked to individual and political interests rather than public ones. Most have been studied extensively in the political science literature but less systematically in the policy sciences (Saward, 1992; Goodin, 1980; Frye et al., 2012; Gans-Morse et al., 2014).

Patching can also be problematic, as the addition of new goals or objectives always increases the risk of incoherence, as does the introduction of policy instruments that suppose new kinds of implementation preferences—for example, when a market orientation is introduced into an instrument set that has been based on a regulatory approach (Howlett and Rayner, 2007).

Layering thus has two sides to it. On the one hand, negative stretching or destructive layering exacerbates tensions between regime elements and leads to wholesale change. However, layering can also have a positive side and help ameliorate or reduce tensions through patching. Moderate layering can be successfully accommodated through a process of learning and patching, leading to a policy mix that exhibits a high degree of coherence, consistency and congruence. Both these processes fall between the design and non-design ends of a spectrum of design processes that moves from highly intentional and instrumental replacement efforts to those that are more partial and less intentional such as ‘smart layering’ or patching and ultimately to those that involve sub-standard design such as ‘stretching’ and poor layering (see Figure 20.2).

All of these design efforts can be done well or poorly, but all reflect some wholesale or partial effort to match policy goals and means in a sophisticated way linked to improving outcomes. Non-design types also vary in the same way but more by process of decision-making than by their sphere of activity. Non-design mechanisms, as highlighted above, include activities such as alternative generation by bargaining or log-rolling, corruption or co-optation, or other means that are not instrumental in the same sense as are design efforts. They can also define the

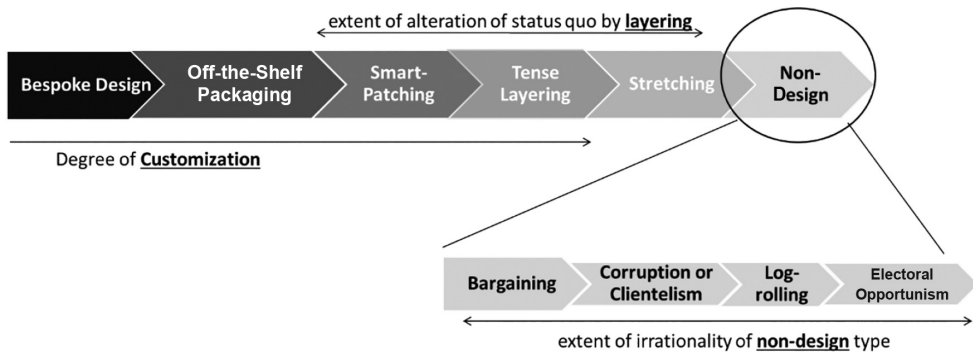


Figure 20.2 A Spectrum of Policy Design and Non-Design Types

Source: Modified from Howlett and Mukherjee (2014).

contextual barriers to design, however, by affecting design efforts to various degrees. Again, such efforts can also be done poorly or well (for example, maximizing the return from a bargain or the returns from corruption) depending on the context and situation and implicating different degrees of appraisal activities and competences or intentions on the part of governments.

Non-design activities can also be broken down in a similar fashion. They extend from those that are compatible with some aspects of design activities, such as bargaining among affected interests over elements of policy alternatives, to those such as pure electoral opportunism. The latter replace the logic of design intentionality with another calculus altogether. These non-design processes have been studied extensively in the political science literature but less systematically in the policy sciences (Saward, 1992; Goodin, 1980; Frye et al., 2012; Gans-Morse et al., 2014), despite their prevalence and importance in many areas.

Conclusion

‘Policy design’ implies a knowledge-based process in which the choice of means or mechanisms through which policy goals are given effect follows a logical process of inference from known or learned relationships between means and outcomes. But not all policies are formulated in this way, and not all designs are successful.

Policy design includes both ‘good design’—in which means are selected in accordance with experience and knowledge—and ‘bad’ or poor design—in which principles and relationships are incorrectly or only partially articulated or understood. In some circumstances, however, policy decisions are more highly contingent and driven by situational logics, bargaining or opportunism and are not the result of careful deliberation and assessment. To distinguish these circumstances from poor design, these situations results can be thought of as ‘non-design.’ This chapter considers the question of both design and non-design modes and formulates a spectrum of policy formulation types that helps clarify the nature of each type and the likelihood of each type of policy process unfolding.

Transforming policy ambitions into practice is a complex process, and intentionally creating the best possible arrangement of policy elements is not always the first item on a government’s mind, nor necessarily within its reach. Many noble efforts of policymakers have failed due to poor design capacity or the inability or lack of desire to alter elements of existing policies in a more logical, instrumental fashion (Cohn, 2004). These experiences have led to a greater

awareness of the various obstacles to policy design efforts and have gradually fueled a desire to better understand the unique characteristics of policy formulation processes and the spaces and contexts in which design efforts are embedded.

As the discussion here has shown, both design and non-design formulation processes vary along several important dimensions. For design situations—that is, those characterized by a government desire to systematically match ends and means in the attainment of policy goals—the processes vary according to the nature of the resources available for design purposes and the constraints imposed by policy legacies. The former often determine the quality of the formulation effort and the design itself, while the latter generates contexts in which processes such as patching and stretching unfold. In a more non-design world, where the intention to instrumentally design is lacking, the processes vary in their distance from the design ideal of public service and improving the public good through better information and knowledge utilization and management efforts (Holmberg and Rothstein, 2012; Rotberg, 2014); constraints on outcomes also exist.

The above discussion of different design modalities and processes does not preclude, but rather is built upon, the recognition and acceptance of the fact that some policy decisions and formulation processes are highly contingent ones in which ‘design’ considerations may be more or less absent and where the logical or empirical relations between policy components are ignored.

Transforming policy ambitions into practice is a complex process. The efforts of policymakers have often failed due to poor designs that have inadequately incorporated this complexity in policy formulation (Stead and Meijers 2009; Cohn, 2004). These experiences have led to a greater awareness of the various obstacles that can present themselves to policy design and have gradually fueled a desire for better understandings of the unique characteristics of policy formulation processes and the spaces in which design efforts are embedded.

The new design orientation calls for a broadening of thinking about design beyond policy tool choices, examining combinations of substantive and procedural instruments and their interactions in complex policy mixes. It also has focused on a more detailed study of the actual formulation processes involved in tool and design choices as these occur and have evolved over time (Linder and Peters, 1990; Schneider and Ingram, 1997; Considine, 2012).

Students of policy design must be aware of these differences and the situations governments are in or want to be in while developing policy options, making recommendations and providing advice to governments. More systematic study of these formulation contexts and processes can help move this area of policy design studies forward.

Note

1. Layering, of course, is a concept developed in the neo-institutional sociological literature by some of its leading figures, namely Beland (2007), Thelen (2004), Hacker (2004), Beland and Hacker (2009) and Stead and Meijers (2004), to explain the pattern through which social and political institutions have evolved over long periods of time.

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